

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JOSE VERA,
Plaintiff,
v.
AURORA LOAN SERVICES LLC, et al.,
Defendants.

No. C 09-03626 CW
ORDER ON DEFENDANTS'
MOTIONS TO DISMISS

Plaintiff's opposition to Defendants' motions to dismiss was due on September 17, 2009. On that date, instead of filing a timely opposition, Plaintiff notified the Court that he will file an amended complaint by October 2. Under Federal Rule of Civil Procedure 15(a)(1)(A), Plaintiff is allowed to file an amended complaint once as a matter of course before being served with a responsive pleading. A motion to dismiss is not a responsive pleading within the meaning of the rule. Nolen v. Fitzharris, 450 F.2d 958, 958 (1971). However, Plaintiff cannot oppose a motion to dismiss by stating that he "will" file an amended complaint. **Plaintiff must file an opposition to Defendants' motions (contained within a single brief) by October 1 or an amended complaint by October 2. If he does neither, this case will be dismissed for failure to prosecute.** Defendants' reply to any opposition to their

1 motions to dismiss will be due October 8. If Plaintiff instead
2 files an amended complaint, Defendants must respond to it in
3 accordance with the Federal Rules of Civil Procedure. A case
4 management conference will be held on November 19, 2009 at
5 2:00 p.m.

6 IT IS SO ORDERED.

7 Dated: September 28, 2009



CLAUDIA WILKEN
United States District Judge